

October 28, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2569

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UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison

OPINION/REPORT

Litigation

OF THE

SPECIAL MASTER

WILLIAM S. SHLUE

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

TUESDAY, OCTOBER 28, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Garry Plaza,

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Camden, New Jersey, 08102, commencing at 2:30 PM.

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MASTROIANNI & FORMAROLI, INC.

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856-546-1100

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1 JUDGE BISSELL: Now we open the matter
2 of William Shlue, S-H-L-U-E, docket number 08-2569.

3 This opinion/report is being issued
4 pursuant to the directives of the Order of Reference
5 to the Special Master and the Special Master's
6 Agreement and the guiding principles of law which
7 underlie this decision to be applied to the facts
8 upon which it is based as set forth in the jury
9 instructions in the Walker and Mejias jury charges to
10 the extent applicable to the allegations of Mr.
11 Shlue.

12 As finalized after review under Local
13 Civil Rule 52.1, this transcript will constitute the
14 written report required under paragraph seven of the
15 Order of Reference to a Special Master.

16 Mr. Shlue was lodged in F Unit, the
17 unit where Officer Baker was working at the time of
18 his murder, and the first unit processed, indeed, on
19 July 30th itself for purposes of removing inmates
20 there and subjecting the area to a search.

21 I'm recommending no cause for action in
22 this matter for three basic reasons.

23 First, there are significant
24 inconsistencies in the testimony of Mr. Shlue between
25 his interrogatory answers on the one hand, and his

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1 trial testimony here with regard to the injuries that
2 he supposedly suffered.

3 Secondly, because I do believe his
4 credibility is affected by the numerous use of
5 aliases, although initially he denied it, which
6 necessarily are for the purposes of deception. And I
7 think that's certainly a characteristic that can be
8 considered in terms of his credibility.

9 And finally, one notes throughout the
10 rather extensive medical reports, submitted here from
11 as early as 1993, psychiatric problems, psychiatric
12 and psychological issues resulting from events, or at
13 least occasions long before the 1997 incident.

14 I'm only going to comment in some
15 detail with regard to the differences in testimony
16 between his interrogatory answers and his testimony
17 at trial before me.

18 When asked to describe in his answers
19 to interrogatories the events that occurred to him,
20 he stated, and I quote, "Dragged by my hair and
21 kicked by a SOG during the lockdown. I now suffer
22 psychological effects from the abuse and
23 intimidation. I see Doctor Goldberg and I'm on
24 medication because I'm afraid of the guards now."

25 If one compares that with his testimony

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1 before us, just to summarize it at least initially,
2 he talks about on this event, on or about the 30th of
3 July, he was grabbed by the hair in the area of his
4 cell. He was hit above the right eye with a fist to
5 the extent that that eye was severely injured,
6 swelled up at the time, bled, and ultimately resulted
7 in severely diminished eyesight in that eye.

8 As opposed to being dragged by his
9 hair, which I presume is bad enough, his testimony
10 before me was that he was grabbed by his hair and his
11 hair was pulled out at the doorway of his cell
12 leading to bleeding.

13 Very different. Very different
14 testimony in both instances. And not one that can be
15 chalked up to mere differences in recollection,
16 passage of time, traumatic impact of the events and
17 things like that.

18 He then adds that there was a second
19 incident that occurred to him, completely unmentioned
20 in his answers to interrogatories, apparently which
21 occurred in the gym.

22 He's asked: "And how did it happen
23 that you got struck in the gym?"

24 This is the bottom of page 14 of the
25 September 11, 2008 transcript.

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1 He said: "I couldn't sit up straight.

2 So what happened?

3 I got struck in the head.

4 Was that with a stick or an open fist?

5 Open fist.

6 Question: Who struck you? Were you
7 able to see?

8 SOG. Like I said, during this
9 incident, you got all the cops that wore masks. You
10 can't identify the faces, I couldn't identify the
11 hands. They had gloves on their hands."

12 Once again, completely inconsistent
13 with his interrogatory answers which are, also, of
14 course, under oath.

15 Further examination of the medical
16 records produced indicates that while he did have
17 concerns or problems with the loss of the hair, it
18 didn't have anything to do with it being pulled out.
19 It was as a result of other conditions which the
20 medical records discuss. Mr. Shlue had made an
21 effort to lay those problems on the alleged event of
22 July 30, 1997, which I find not to be credible.

23 The defense introduced as well in this
24 case as in others the reports of the various
25 ombudsmen who were on duty during the course of the

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1 cell extraction during the Bayside lockdown. Now,
2 I've considered very carefully, not only in this case
3 but in others, whether the reports of the ombudsmen
4 are for one reason or another sanitized. But I just
5 do not and will not infer that these people like
6 Margaret LeBak and Anthony Turner and Carmen Quilles
7 and Paul Royal and Luis Silva would take their
8 position so lightly and so compromise their integrity
9 and the very important duties which they're meant to
10 perform here as, in many respects, guardians of the
11 proper treatment in prisons, that they would
12 uniformly and collectively, as if by prior agreement,
13 issue sanitized or favorable reports day after day to
14 conceal abuses such as those alleged by Mr. Shlue or
15 others.

16 And as I examined these reports
17 introduced as D-48 through D-51, and also D-135, they
18 certainly do stand for the proposition that both with
19 regard to the extraction from F Unit and the conduct
20 of SOG officers while the inmates were in the gym,
21 nothing along the lines of the conduct which Mr.
22 Shlue ascribes either in the unit or in the gym took
23 place.

24 As I've said before, there have been
25 certain cases where there is no indication that the

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1 ombudsmen would have been in a position to observe,
2 or other incidents where ombudsmen's reports were not
3 directly relevant. But here they are, and both the
4 ombudsmen covering F Unit and the gym in these
5 critical hours when one would have expected them to
6 be quite vigilant in the wake of Officer Baker's
7 murder, indicate that events were handled
8 systematically, professionally and in large measure
9 without incident.

10 There were some observations in some of
11 these reports that indicate incidents. Just to take
12 an example from Mr. Turner's report with regard to F
13 Unit, he mentions, "On two (2) occasions, I observed
14 an inmate attempt to assault the Corrections
15 Officers, as they were being processed. Each was
16 subdued and removed to a segregation (close custody)
17 area." Now, one might say that's favorable to the
18 corrections officers, so why would you have to be
19 candid. Well, it's there, it's mentioned. It might
20 well be the source of future Internal Affairs
21 investigations. He wasn't silent on the topic, which
22 he could have been if he were part of any whitewash.

23 So for the reasons I mentioned before,
24 I just don't find that Mr. Shlue has sustained the
25 claims which he has asserted with regard to the

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1 conduct against him by the SOG officers as he's
2 alleging.

3 Finally, although not every item of
4 evidence has been discussed in this opinion/report,
5 all evidence presented to the Special Master was
6 reviewed and considered.

7 For the reasons set forth above, I
8 recommend in this report that the District Court
9 enter an order and judgment of no cause for action
10 with regard to William Shluc.

11 Okay. Counsel, that concludes my
12 efforts for the day, and I'll see you tomorrow.

13 MR. ROSELLI: Thank you, Judge.

14 MR. RAY: Thank you.

15 MR. KAIGH: Thank you.

16 MR. LAZZARO: Thank you.

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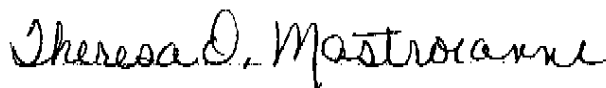
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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: October 28, 2008

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